

Government parties' statement of factual position for Second PH

20 September 2022

The Government parties' reply to Mr McGrail's statement:

My learned friend has said that the Chief Minister as a partner in Hassans had a shareholding interest in the Company at the centre of the fraud investigation and therefore stood to gain financially from the alleged fraud. Mr Picardo's interest in that Company, was an interest of the partnership, Hassans, of which he is a partner together with all other partners of that firm. The evidence will show that the Chief Minister's intervention in relation to the subject of the alleged fraud was to ensure that those who may have wished to benefit did not do so, by ensuring that the NCIS contract remained with the incumbent, Bland and only with them.

My learned friend has said that the Chief Minister was mentioned in the OP Delhi investigation documents. The Chief Minister was not then and has never been a suspect in that investigation. He was asked to give a witness statement in relation to certain communications to which he had been a party and he did so.

The Government parties' statement:

17. The reasons and circumstances alleged by Mr McGrail himself to have caused him to cease to be Commissioner of Police have been clearly set out by him, and therefore it is axiomatic that, from his perspective, those are the reasons and circumstances that led to his retirement. The reasons and circumstances asserted by Mr McGrail are the following:

- (i) That he has been unfairly treated by the Gibraltar Police Authority (in relation to its process under section 34 of the Police Act); and
- (ii) that improper pressure put upon him by the Chief Minister and the Attorney General to alter the course of a live criminal investigation known as "Operation Delhi".

18. The Government Parties case is that Mr McGrail ceased to be Commissioner of Police because he (properly and inevitably) sought early retirement consequent on (i) learning that he had lost the confidence of the Governor and the Chief Minister and (ii) that, had he not sought early retirement, there was a very real risk that the Governor would call publicly for his resignation, as he had the power to do under section 13(1)(f) of the Police Act. The Chairman of the Gibraltar Police Authority had said this to him, and Mr McGrail clearly believed that the Governor would do so. This is evident from Mr McGrail's own stated case.

19. Only His Excellency the Governor (and not the Chief Minister, Mr Picardo, still less the Attorney General, Michael Llamas) had, at that time, power to call for Mr McGrail's resignation, and it is therefore self-evident from his own statement that he chose to retire to avoid the anticipated actions of the Governor, who had lost confidence in him, and had told him so.

20. Indeed, given the nature of the allegations made by Mr McGrail against each of the Governor, the Chief Minister and the Attorney General in his solicitors' letter dated 29th May 2020 to the Gibraltar Police Authority, and the intemperate manner in which they were expressed, it is inconceivable that he could reasonably expect that he could remain as Commissioner of Police thereafter, once those allegations had come to their notice, since it would no longer be possible for them to work together with mutual confidence, in the manner and to the extent that their responsibilities require. This includes Mr Pyle, whether in his (then) temporary position as Governor or when he would later return to his post as Deputy Governor.

21. Accordingly, the reasons why the Chief Minister and the Attorney General had also lost confidence in Mr McGrail were not, in the event, relevant to the reasons and circumstances leading to his choosing to retire. That was clearly triggered by the actions and position of the Governor. The Governor had not lost confidence in Mr McGrail, and did not intend to call for his resignation, for any reason to do with the criminal investigation in which Mr McGrail alleges (which is denied and roundly rejected) that the Chief Minister and the Attorney General interfered.

22. The Governor's loss of confidence in Mr McGrail's probity and integrity, and his leadership of the RGP had been progressive over an extended period of time and by reason of a number of incidents and matters, namely, the Governor's view about –

(i) His mishandling of an incident at the airfield in February 2017 involving an RAF airplane and some of the most senior military officers in Gibraltar, and its aftermath, which unnecessarily brought the relationship between Gibraltar and the Ministry of Defence to near crisis point;

(ii) The RGP's handling of an investigation into an incident in March 2017 in which an RAF pilot was severely assaulted during a stop-over in Gibraltar, and which resulted in no-one being prosecuted;

(iii) The fractured and almost hostile relationship between Mr McGrail and the Gibraltar Police Federation, which was resulting in very low morale in the RGP, which resulted in tensions which culminated in a formal complaint by the Federation to the Gibraltar Police Authority about Mr McGrail;

(iv) Mr McGrail's failure to address or effectively tackle the serious issues raised in the 2016 report on the RGP conducted by Her Majesty's Inspectorate of Constabularies. The 2020 report by HMIC also reported some finding which tended to vindicate the issue in (iii) above; and

(v) The fact that the Governor considered that he had been misled by Mr McGrail, through intentional omission to provide the Governor with the best information or intelligence available to Mr McGrail (which he was providing to others) in relation to a matter arising from the incident at sea on 8 March 2020 in which two Spanish Nationals died following a collision with an RGP launch, and which touched very specifically upon HMG's and the Governor's responsibilities for external affairs, namely information relating to the location of the incident.

23. All of these factors arose and occurred well before the alleged (and denied) interference by the Chief Minister and the Attorney General in the criminal investigation known as Operation Delhi. The Governor's deep concern with Mr McGrail's leadership qualities had absolutely nothing to do with that RGP investigation. Indeed, the Governor had no prior knowledge about the criminal investigation, until the Chief Minister brought it to his attention in their meeting on the 15th May 2020.

24. The consideration of whether to invoke the procedure in section 13 of the Police Act to call for Mr McGrail's resignation was entirely the Governor's. At no time was he put under any pressure by any person, including the Chief Minister, to decide to do so. It is frankly fantastic to believe, as would need to be the case for Mr McGrail's case theory to be correct, that, however much Mr McGrail may be willing to attribute improper conduct and motives to the Chief Minister and the Attorney General, the Governor would state that he had lost confidence in the Commissioner of Police and consider calling for his resignation, based on those improper motives and conduct, in full view of UK Foreign Office ministers, senior officials and legal advisers, whom the Governor kept briefed in timely manner.

[With leave of the Commissioner, Paragraph 25 was not read aloud]

26. It is accordingly the position of the Government Parties that –

(i) Mr McGrail self-evidently, on his own stated version of events, did not retire because he felt obliged to do so on account of any alleged interference in the conduct of the criminal investigation; and

(ii) the reason and circumstances that led to Mr McGrail ceasing to be Commissioner of Police are that he chose to retire, and he chose to retire because he knew

(a) that he had lost the confidence of both the Governor and the Chief Minister, and that in those circumstances he could not realistically continue in post; and

(b) that, following the Gibraltar Police Authority's decision that it could not, by reason of the manifestly flawed procedure that it had employed, call for his retirement, he believed that the Governor would call for his resignation under section 12 of the Police Act 2006, and that by retiring before that happen he would save his pension (which he wrongly thought was in jeopardy if he had to resign).